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The President's Page

By Kenneth N. Chantry

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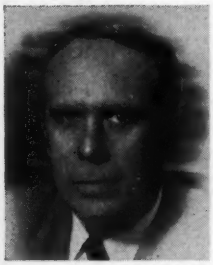

Kenneth N. Chantry

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Issue Editor — C. Clinton Clad

To What Court and Judges Is Respect Due?

By Leon R. Yankwich, J.D., LL.D.
Chief U. S. District Judge
Southern District of California

Judge Yankwich

It is one of the duties of an attorney "to maintain the respect due to the courts of justice and judicial officers." (California Business & Professions Code, §6068.)

In a previous talk to admittees, I treated the delicacy of the relationship between counsel and the court. (Los Angeles Bar Bulletin, Vol. 38, No. 11, pp. 393 et seq.) A more recent one discussed the function of the lawyer in encouraging and helping maintain the independence of the judiciary. (Los Angeles Bar Bulletin, Vol. 40, No. 51, pp. 131 et seq.*

Reciprocal rights and duties arise out of the relationship between the court and litigants and the lawyers who represent them. To the duty of the lawyer to maintain respect to courts and judges, there is a concomitant duty on the part of courts and judges that they function in a manner to deserve that respect. For this reason the canon speaks of "the respect *due*". This is but an application of the rule that power is accompanied by corresponding obligation. The French express it in the motto "Nobless oblige" (Nobility has its obligations).

There have been times in the judicial history of the English speaking world when the courts as a whole failed the community they were intended to serve. Among others, the period of Jeffreys and his "bloody assizes" and Scroggs in the seventeenth century are infamous. And it must be recognized that judges may exhibit the weaknesses which are common to all men. The Supreme Court of the United States, in a recent case, recognized this when it said:

*This article by Judge Yankwich reprinted in full from the LOS ANGELES BAR BULLETIN, in the Congressional Record of June 8, 1955, at the request of Hon. Cecil R. King.

> "Men who make their way to the bench sometimes exhibit vanity, irascibility, narrowness, arrogance, and other weaknesses to which human flesh is heir. Most judges, however, recognize and respect courageous, forthright lawyerly conduct." (Sacher v. United States, 1952, 343 U.S. 1, 12.)

The Canons of Judicial Ethics adopted by the American Bar Association in 1924 have given us the characteristics to look for in courts and judges. Some are here given:

> "Courts exist to promote justice, and thus to serve the public interest." (Canon II)
>
> "A judge should be temperate, attentive, patient, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law and diligent in endeavoring to ascertain the facts." (Canon V.)

So we discuss briefly the meaning of these standards in the light of history and the present-day needs.

I

OF COURTS OF JUSTICE

An old definition which comes to us from Blackstone, (3 Blackstone, Commentaries, 23) although it is as old as Coke, defines a court as "A place where justice is judicially administered." Courts are a means established by society for the peaceful settlement of controversies between the different members of the community and between them and the community as a whole.

In early civilizations the function is performed by tribal chiefs or by religious heads. As society becomes more complex separate institutions named courts are established, — the chief function of which is to apply, to controversies coming before them, the body of regulations of conduct which the particular community calls its laws.

All codes of laws which govern the lives of human beings arise out of men's needs; they arise out of human relationships, which existed before society began to regulate them. As we study the history of mankind and the rise of legal institutions, we come to understand law not, as older writers understood it, as a rule of human action prescribed by some superior which the inferior is bound to obey, but as one of the methods of social control. A well known legal scholar, Dean Roscoe Pound, has defined law in the following manner:

> "Social control through the systematic application of the force of politically organized society." (Roscoe Pound, More About the Nature of Laws, in Legal Essays, McMurray, 1935, p. 531.)

What gives strength to law is the fact that through it is expressed the desire of the State to regulate and control certain activities and relations.

The signficance of courts derives from the fact that they substitute justice *by right* for justice *by grace*. The importance of the judge who performs the judicial function is, therefore, very great. For this reason, the most significant portion of the definition of law we have just given is the word "judicially." It signifies that the justice administered in our courts is not justice according to some abstract ideas of right and justice, but according to definite rules laid down by society in its code of laws,—the code to which it gives the sanction of its force.

Cases in our courts are determined according to definite legal principles, established by society and applied by the judge,—upon evidence received in court only,—to the facts in a particular case. The justice of the oriental khadi, a justice dependent wholly upon the whim of him who administers it, is not the justice of American courts. On the contrary, the principle which governs the administration of justice in the courts of law of the United States is the principle of the supremacy of law, the principle stated by John Adams in his peroration for the Bill of Rights of the Massachusetts Constitution, Article XXX:

> "To the end it may be a government of laws and not of men."

Under such a system, the protection of life, liberty and property is not left to the caprice of an individual, but is governed by rules of law applicable to all. Judges thus become the guardians of the rule of law. Law, under this conception, is the common yardstick by which are measured the relation of one citizen towards the other, and the relation of all towards the commonwealth.

Even St. Thomas Aquinas' famous *"ordinatio ad bonum commune"* takes into consideration the societal element of law.

> "Law," according to him, "is nothing else than an ordinance of reason for the common good, promulgated by him who has

the care of the community." (The Summa Theologica, Question 90, Article 4, p. 747, Vol. 2, in The Basic Works of St. Thomas Aquinas.)

II

THE QUALITIES OF A JUDGE

Given this nature of the law and the function of the judge in it the qualifications of the judge have been the subject of much speculation. Socrates has given us a summary which has become famous:

> "Four things belong to a Judge: to hear courteously, to answer wisely; to consider soberly and to decide impartially."

This definition stresses the personal qualities of the judge. And it cannot be denied that if a judge has ability to hear *courteously*, answer *wisely*, consider *soberly* and decide *impartially*, he can perform his function effectively.

Another legislator charged judges in this manner:

> "Hear the causes between your brethren, and judge righteously between every man and his brother, and the stranger that is with him. Ye shall not respect persons in judgment, but ye shall hear the small as well as the great, ye shall not be afraid of the face of man." (Deuteronomy I: 16-17.)

Elsewhere, the same legislator speaks of judges as

> "able men, such as fear God, men of truth, hating covetousness" (Exodus, XVIII:21.)

Here the chief emphasis is on the doctrine of equality before the law unknown to the pagan world and which is so basic in our own life, and conformance to ethical standards and the independence in the judiciary which the makers of the Constitution deemed so desirable and of the absence of which in the colonies the Declaration of Independence complained in the well-known charge that the King

> "had made judges dependent on his will alone."

The colonists had experienced the evil of a subservient judiciary and had determined that, once independence achieved, the independence of judiciary be assured. For this reason, in the Constitution as framed, they provided for the division of powers into executive, legislative and judicial and against encroachment of one into the domain of the other.

As justice by right takes the place of justice by grace, the function of the judge is to administer and interpret the law according to definite norms. To do so effectively, the judge must understand

life about him and the societal conflicts from which litigation stems.

As law grows out of the needs of the community its content must change and adapt itself as the community changes. Adaptability thus becomes one of the main merits of the "common law" system. Like a sturdy tree its roots are in the past, its trunk in the present and its top most branches reach skyward. And the judge who, in the process of applying and interpreting the law, bears this constantly in mind is most likely to achieve such perfection as may come to his craft.

Mr. Judge Cardozo has summed up the function of the judge in our society in these classic words:

> "The judge is not to innovate at pleasure, he is not a knight errant, roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in the social life'." (Cardozo, The Nature of the Judicial Process, 141.)

What has just been said applies to all judges. But because of the dual nature of our government we have a dual judiciary,—state and federal. To the federal judiciary is given the function of dealing with controversies which arise under the Constitution and laws of the United States. So the federal courts stand guard over the Constitution and laws of the United States.

The complex industrial and social development in the last few decades, and the periods of war and international crises, have resulted in the widening of the area of federal control and regulation. These have brought on a corresponding expansion of the jurisdiction of federal courts. The power to invalidate legislation, state or federal, which contravenes the Constitution,—a unique American development of constitutional law asserted by the federal courts early in our judicial history, has given to the federal judiciary an authority not possessed by the judiciary of any other country governed by constitutional principles.

For these reasons, the federal judiciary may affect fundamentally the life of every citizen. In the realm of the personal rights guaranteed by the Constitution and the Bill of Rights, the federal courts become their chief and ultimate guardians. This guardianship is, perhaps, the most important function of the federal courts. Our

rights may be personified in the person of those who come into conflict with the law. Under democratic political philosophy they may assert such rights against the community itself. And the courts must not only allow, but *must insure* such assertion.

Totalitarian systems—Fascist, Communist, and Nazi—do not permit this. A Soviet teacher of law has summed up the totalitarian doctrine, which denies to the individual rights which he may assert against the State, in these words:

> "Man should have no rights that place him in opposition to the community."

By contrast, the very essence of our freedom consists in the guarantee of certain rights to the individual, of which neither a majority nor the community *as a whole* can deprive him without due process of law.

The federal courts are shields against arbitrary power in the federal domain, no matter who exercises it. So when a President of the United States sought to gain control of a large private industry threatened by strikes the courts, finding no justification in law for such action, undid it. (Youngstown Steel & Tube Co. v. Sawyer, 1952, 343 U.S. 579.)

The great power of the federal judiciary has led a French student to call our government "le gouvernement des juges" (A government of judges.)

The United States district court is the most important federal trial court. Excepting some specialized courts and excluding petty criminal cases which may be tried by commissioners, the United States district court is the court in which most of the litigation, civil and criminal, within the jurisdiction of the federal courts originates. As a great majority of the cases never go beyond the judgment of the district court, this court has a special importance.

This was stressed in a letter written to me on September 10, 1935,—five days after I was inducted as a judge of this court,—by the late Judge Jeremiah Neterer, one of the most distinguished trial judges of the Ninth Circuit:

> "I think the office of the United States District Judge offers the greatest opportunity for service of any official position in the United States, save that of the President alone. I do not except even the Supreme Court Justices, because a district judge deals with live issues, matters closely allied to human relations, issues of the most important concern, most of which

> can never reach the appellate court, at least not the Supreme Court of the United States."

In sum, our task is great. Its performance brings into play those qualities of knowledge, social idealism, courage and integrity which have always been considered the attributes of a good judge.

At times, the community about us, or at least the portion that makes itself heard, champs legal restraint. There is demand for "swifter" or justice more consonant with "popular" wishes, the type of summary justice of the oriental khadi or the one which in western pioneer days was known as the justice "West of the Pecos." Suited as this may have been to times past, it cannot be the justice of our day.

Some would have us destroy the constitutional guaranties which are the basis of our liberty. Others would have us deny the benefit of these protections to those who come in conflict with the law. Indeed, some would brand as criminals or deprive of valued privileges those who invoke certain constitutional guarantees. But if we deny constitutional protection to anyone who is entitled to it, or brand anyone as criminal or unworthy of public trust for invoking it, it ceases to exist for us all. So it becomes more important than ever for the federal judiciary to stand fast in the guardianship of the rule of the law against mob or majority, popular clamor or public opinion, and *stand unafraid*.

Some years ago a court in England ordered officers of the Crown to produce certain documents which they thought should not be produced in court. After the order was made the judge added:

> "It is not to be presumed that the court is in any respect the servant of the Crown."

Commenting on this a local columnist said:

> "I guess the bally old British will manage to stagger along as free men for quite a spell yet." (One Man, in *Post-Record*, January 9, 1934.)

In this comment the editor caught the real meaning of "government of laws." For it is of the essence of this principle that the judiciary be not, as it is in totalitarian countries, *a mere instrument of governmental policy*.

A modern student of western society has warned:

> "The rational course of justice and administration is interfered with not only by every form of 'popular justice,' which

> is little concerned with rational norms and reasons, but also by every type of intensive influencing of the course of administration by 'public opinion,' that is, in a mass democracy, that communal activity which is born of irrational 'feelings' and which is normally instigated or guided by party leaders or the press. As a matter of fact, these interferences can be as disturbing as, or, under circumstances, even more disturbing than, those of the star chamber practices of an 'absolute' monarch." (Max Weber on Law in Economy and Society, 1954, p. 356.)

To a democratic society there are no worthy alternatives to justice under law.

This principle can achieve full fruition only if there be an earnest desire on the part of the entire community to achieve justice through its instiutions. For law reaches only a few. The majority do not need the fear of the sanctions or penalties of the law to fulfill their private or public obligations. In the last analysis, the administration of justice is a social problem, which the community as a whole must meet. Such it has been for every generation from the dawn of recorded civilized history. It is for us to meet it, in a spirit ripened by the experience of the past—enlightened by the highest social idealism of the age—with eyes fastened on the future, and the aim to achieve a better ordered life.

So we come back to the question propounded at the beginning of this discussion: "What type of courts and judges are enitled to our respect?"

And the answer is: Courts which aim to achieve justice under law, the ideal expressed by Ulpian in his famous definition of justice as

> *"Constans et perpetua voluntas jus suum cuique tribuendi."* (The constant desire to give to everyone his due.)

Judges who consider a lawsuit not a game, the object of which is to award a prize to the more skillful of two contestants, but as society's method of achieving social peace and justice under law. Because the materials with which litigation deals are human and the instrumentalities through which justice is accomplished are also "all too human," the end product, at times, leaves much to be desired. But so long as the aim is, in the words of the Book of Common Prayer, to "truly and indifferently minister justice,"—so long as, in the language of Emerson, we "hitch" our "wagon to a star," the federal courts and those who preside over them will fulfill truly their great calling in our free society.

The Attorney and the Juvenile Court

A summary of practices, procedures, and policies followed in the Juvenile Court for Los Angeles County, and of the role of the attorney appearing before that court

1955

Prepared by the Committee on Juvenile Court of the Los Angeles Bar Association, in cooperation with the Judges of the Juvenile Court for Los Angeles County and with the Los Angeles County Probation Officer, for the information and guidance of members of the Bar.

I. INTRODUCTION.

The following material was prepared by the Juvenile Court Committee of the Los Angeles Bar Association in cooperation with (1) the Honorable William B. McKesson and the Honorable William B. Neeley, Judges of the Superior Court for Los Angeles County, currently sitting as judges of the Juvenile Court, and (2) Mr. Karl Holton, Los Angeles County Probation Officer. It has been approved by Judges McKesson and Neeley and by Karl Holton. It is intended to be informative but not necessarily definitive. Its purpose is to inform members of the Bar of certain practices, procedures, and policies now followed in Juvenile Court cases so that members of the Bar who are called upon to serve in such cases can render more effective assistance to their clients and to the court.

Most attorneys infrequently are called upon for assistance in Juvenile Court matters. As a result, when a member of the Bar is called upon to appear before the Juvenile Court, his unfamiliarity with its functions and procedures may lead to embarrassment, and certainly will prevent his making his full contribution in connection with the disposition of the case. The Committee on Juvenile Court has learned of a number of instances in which attorneys actually have declined to appear in a Juvenile Court case because of unfamiliarity with the proceedings of that Court.

It is the Committee's conviction that informed participation by more attorneys in Juvenile Court proceedings would be highly desirable and that many attorneys who never have appeared in a Juvenile Court case would welcome an opportunity to do so.

The material prepared by the Committee is divided into two parts. The first part, "Practical Suggestions for Attorneys Involved

in Juvenile Court Matters," deals generally with the purpose of the Juvenile Court Law and the areas in which the attorney who is called upon for assistance in a Juvenile Court proceeding can perform a particularly significant function. The second part, entitled "What Can the Attorney Expect of the Juvenile Court," covers a number of points which have, in the past, been the source of some uncertainty and confusion for members of the Bar.

II. PRACTICAL SUGGESTIONS FOR ATTORNEYS INVOLVED IN JUVENILE COURT MATTERS.

1. *Source of Law.*

The Juvenile Court Law, which was originally enacted in 1903, now is a part of the Welfare & Institutions Code. It is contained in Sections 550-961 of that Code. Its purpose is to provide a suitable means for bringing both dependent and delinquent children under the jurisdiction of the Superior Court and to give the Court authority to exercise broad discretion in the matter of the care, custody and education of such children. A closely related statute, the Youth Authority Act, is contained in Welfare & Institutions Code, Section 1700 et seq.

An informative commentary on the California Juvenile Court Law will be found in the article by Judge William B. McKesson entitled "Juvenile Courts in California," which appears in the April, 1952, edition of the LOS ANGELES BAR BULLETIN.

2. *These are not Criminal Proceedings!*

A proceeding before the Juvenile Court is not a criminal proceeding. The two types of proceedings which are brought in the Juvenile Court generally are referred to as "Delinquency Proceedings" and "Dependency Proceedings," the latter involving neglected but non-delinquent children. Even in a so-called "Delinquency Proceeding," no representative of the District Attorney's office appears.

There are no formal pleas in Juvenile Court proceedings, such as "guilty," "not guilty," "jeopardy," etc., because such pleas are distinctly directed to the issue of criminal culpability or accountability for the alleged act of misconduct.

Bail is not used in the Juvenile Court of Los Angeles County, for if a minor evidences enough responsibility so that it can be anticipated that he will be in court when directed to be there, and if the environment to which he can be returned pending his hearing is satisfactory, then he is released, as it were, on his own recog-

nizance. The Judges of the Juvenile Court for Los Angeles County take the view that bail, at best in such an instance, would merely place a burden on the minor's family, and if the minor failed to appear, would result in a penalty for the minor's failure to comply with the Court's instructions, a failure over which the parents probably would have very little control.

In lieu of fixing bail in detained cases, the procedure in Los Angeles County is to hold pre-detention hearings within 24 hours after the filing of the petition. At the pre-detention hearing, the statements contained in the petition are reviewed with the minor in the presence of his parents and/or his other relatives, and/or his attorney. At the time of the pre-detention hearing the Court endeavors to ascertain the correctness of the statements in the petition, including not only the statement of the alleged act of misconduct but also the statements with respect to age, residence of the minor, residence of his parents, etc. Two things are determined at the pre-detention hearing: (1) which allegations of the petition are admitted and which allegations are denied by the minor. This enables the court to determine what issues of fact will be raised at the final hearing, as to which witnesses must be called; (2) the need for detention of the minor pending final hearing. This is determined by inquiry into the home conditions of the minor; his position in the home; past delinquent acts, if any; regularity of school attendance, and so on. Whether the minor is detained in custody or released to the custody of his parents or other relatives pending a final hearing is predicated on many factors and is not primarily determined by whether the minor admits or denies the alleged acts of misconduct as stated in the petition.

From a procedural standpoint, the Court, at the time of the pre-detention hearing, fixes the date of the final hearing and the department in which that hearing will be held.

Although a determination by the Court of whether or not the minor committed the alleged act of misconduct certainly is vital, the real object of the final hearing in Juvenile Court is not to arrive at a cold finding of guilt or innocence (as in the ordinary criminal case) but to determine whether it is in the best interests of the minor and the community to make the minor a ward of the Court.

Desipte the fact that Juvenile Court proceedings are not criminal in nature and involve principles and considerations which often are

peculiar to that type of proceeding alone, two important considerations should be kept in mind:

(a) Constitutional safeguards are just as applicable in a Juvenile Court proceeding as in any other proceeding in which personal and property rights are involved;

(b) Although the disposition of a delinquency proceeding in the Juvenile Court does not give rise to a criminal record for the minor, a minor's Juvenile Court record frequently is inquired into by bonding companies, prospective employers, and the Armed Services.

3. *Informal Nature of Proceedings.*

A Juvenile Court hearing is not conducted with all the usual formalities of a court of law. Technical objections to evidence are inappropriate and unnecessary. However, matters of substance are as important here as in any court proceeding. The knowledge and ability of the minor's attorney can be of particular value when brought to bear upon the probative value of the evidence introduced at the hearing.

Upon the timely request of the attorney for the minor, the Probation Officer assigned to the case will obtain the issuance of citations to require the appearance of witnesses whom the attorney wishes to call. Such citations may be served by any person qualified to serve process. It is suggested that the attorney advise the Judge or hearing officer at the outset of the hearing, if possible, of the number of witnesses he expects to call.

As a matter of general policy, Juvenile Court hearings are held in private; the court has discretion to permit a public hearing upon the request of the minor or his parents or guardian, but public hearings are extremely rare.

4. *Relationship between Attorney and Probation Officer.*

In the ordinary criminal case the Probation Officer does not enter the picture until after a decision upon the guilt or innocence of the defendant has been reached. In a Juvenile Court case, on the contrary, the Probation Officer plays a significant part from the very outset. He is charged with making an investigation into all of the relevant circumstances surrounding the case and rendering a report of his investigation and recommendations to the Juvenile Court. In making its disposition, the Juvenile Court relies to a considerable extent upon the report prepared by the Probation Officer.

For these reasons, it is strongly recommended that the attorney retained in connection with a Juvenile Court proceeding obtain the name of the Probation Officer assigned to the case as soon as possible and establish contact with the Probation Officer. The attorney can frequently be of great assistance to the Juvenile Court and to the minor by suggesting facts which should be considered by the Probation Officer or matters which should be investigated by him before the report is formulated. Moreover, the attorney may find it desirable to discuss with the Probation Officer the basic problems which appear to be presented by the minor's case and to suggest a plan for the rehabilitation of the minor. If the attorney does not agree with the plan which the Probation Officer intends to recommend, he should formulate and present his own plan to the Court.

The attorney should bear in mind that the Probation Officer's thinking with regard to a Juvenile Offender is primarily social rather than legal. In conducting his investigation and in formulating his report and recommendations, he is focusing on the question "What has made the minor delinquent?" He looks to factors of heredity, environment, family conditions, school progress, and so on. The immediate offense which brings the minor before the Court is quite frequently a manifestation of a deeper and more significant social and behavior condition which the Probation Officer tries to reach, interpret and correct.

Once the Court has decided that a particular plan is in the minor's best interests, one of the most effective services the attorney can render is to help to bring about an understanding of why the Court has adopted a particular plan and to foster a spirit of cooperation on the part of the minor and his family in carrying out the plan with the help of the Probation Officer. Where the plan adopted by the Court requires the minor to be taken from his home and placed elsewhere, both the minor and his family frequently regard the plan as punitive rather than rehabilitative. Such an attitude is understandable, but it develops feelings of resentment which, if allowed to continue after the case has been heard, can defeat any plan for the minor's rehabilitation.

Does the attorney have the right to examine the Probation Officer's report? The Judges of the Juvenile Court answer this question in the negative. The Probation Officer's report is regarded as a confidential communication to the Court. The Probation Officer himself has no authority to disclose it to anyone except the Court.

As a matter of general policy, the Judges of the Juvenile Court have concluded that it would be unwise, except in exceptional circumstances, to disclose the report to the minor, his parents, or his attorney. The reasons back of this policy briefly are as follows:

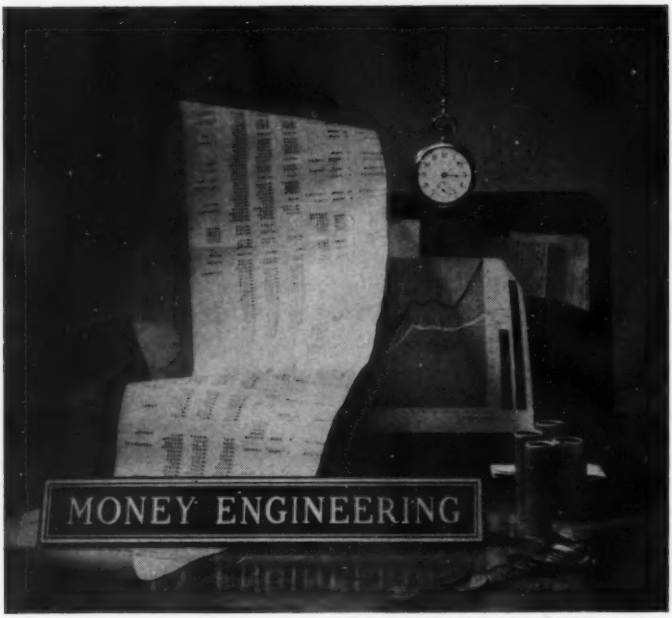
In a great many cases the Probation report will indicate that there are serious differences between the mother and the father of the minor. The report may go into facts and circumstances which one parent never would have revealed if he or she thought there was any possibility that the other parent would learn of them, or would learn that they had been mentioned. The report frequently will disclose matters which the child does not know, such as the fact that the child is illegitimate or adopted. The Court's view is that, if a report of this kind were not kept confidential, great harm might result.

The Judges of the Juvenile Court now take the view that they cannot realistically place the Probation Officer's report into the hands of the attorney for the minor and the minor's parents and, at the same time, enjoin the attorney against disclosing to his clients what he has read. The judges now feel, and for some time have felt, that the attorney in most cases would not want the responsibility of having to keep from his clients pertinent facts which have been disclosed to him. These practical considerations lie behind the general policy against disclosure of the Probation Officer's report.

The question immediately comes to mind: How is the attorney to be sure that he knows all of the important facts upon which the decision is based? As a matter of policy, the Judges and hearing officers of the Juvenile Court, upon the request of the attorney, usually will discuss informally with the attorney the general nature of the Probation Officer's report and the facts contained in the report which may influence the decision of the Court to a substantial degree.

5. *Review of proceedings.*

If a Juvenile Court case is heard by one of the referees appointed by the Juvenile Court Judges, or by a Court Commissioner, and if the attorney takes exception to the findings and recommendation of the referee or commissioner, he may ask to have the case heard anew by one of the Juvenile Court Judges. Normally such request will be granted if made in timely fashion.



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III. WHAT CAN THE ATTORNEY EXPECT OF THE JUVENILE COURT?

1. *General attitude of Juvenile Court toward Attorneys.*

The judges and hearing officers of the Juvenile Court recognize that attorneys have a valuable contribution to make in Juvenile Court proceedings. In a contested case, this contribution takes the form of assistance in bringing all of the material facts before the court, much as in an ordinary civil lawsuit. In a case where the facts are admitted (which is true a great majority of the time in Juvenile Court matters) the court will welcome assistance from the attorney in developing and suggesting to the Judge or hearing officer a plan which best will be suited to the minor's interests.

It has been the experience of the Juvenile Court that attorneys frequently come into the picture too late to make the contribution to a Juvenile Court proceeding which earlier participation would have permitted. The Juvenile Court therefore encourages attorneys to take part in its proceedings at as early a stage as possible.

2. *Opportunity to Consult with Probation Officer.*

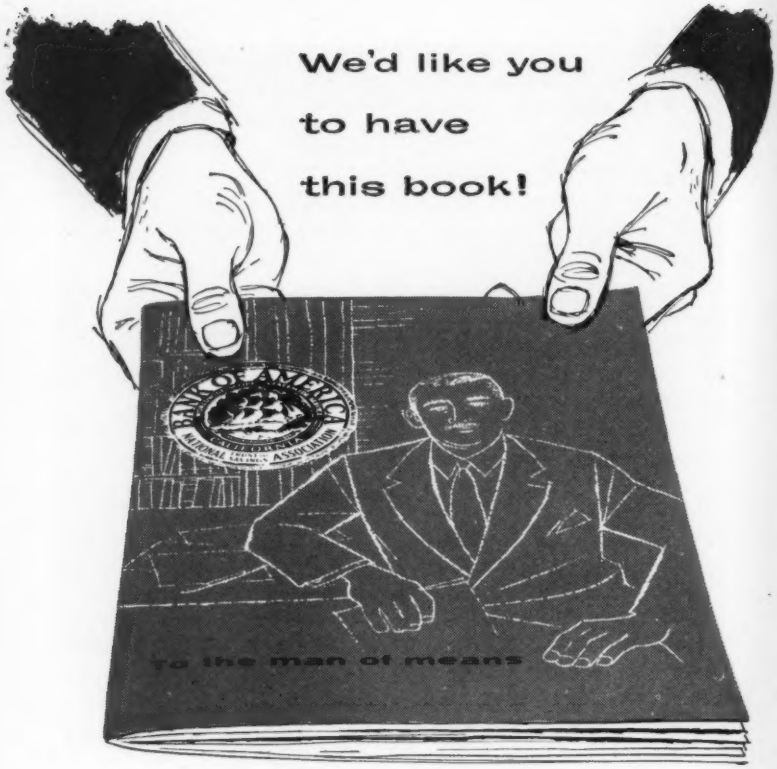
The Juvenile Court relies to a great extent upon the report on the minor prepared and submitted by the Probation Department. Since this is true, it is essential that the report contain a full and accurate statement of all pertinent facts.

When the Probation Department is informed that an attorney represents a minor in a Juvenile Court proceeding, the Deputy Probation Officer will, whenever possible, confer with the attorney and extend to the attorney an opportunity to submit facts and suggestions for inclusion in the report before it is submitted to the judge or hearing officer.

3. *Recognition of Attorney.*

If the Deputy Probation Officer assigned to the case knows that the minor is represented by an attorney, he will invite the Judge's or hearing officer's attention to this fact. It also is advisable for the attorney himself, at the outset of any proceeding before the Juvenile Court, to inform the Judge or hearing officer of his name and of the fact that he appears on behalf of the minor.

Upon being so informed, the Judge or hearing officer will, at the opening of the proceedings, state for the record that the minor is represented by counsel and also will, at an appropriate time, afford counsel the right to participate in the hearing.



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4. *Examination of Witnesses and Presentation of Evidence.*

Where the minor does not admit the facts alleged in the petition, or where there is a contested issue in the case, the Judge or hearing officer will afford counsel the same right to present evidence and to examine any witness as is afforded in other legal proceedings.

It is the policy of the court to discourage overly technical objections to evidence. It is, however, the right and duty of the attorney to make known to the court, by appropriate objection or otherwise, his views as to any defect of substance in the evidence presented to the court.

Where a contested issue is involved, the Judge or hearing officer will welcome the attorney's views on the probative value of the evidence before a decision is reached.

Where the facts alleged in the petition are admitted, it is the practice of the Judges and hearing officers to give the attorney an opportunity to suggest a plan for the minor, or to present any facts or arguments in mitigation of the offense which he desires to present. All such suggestions, facts, and arguments will be taken into consideration before a decision is reached.

5. *Expeditious Processing of Cases.*

The calendar of the Juvenile Court for Los Angeles County is one of the most crowded in the country. Hence, except in the most unusual situations, the Judge or hearing officer will not grant continuances and will seek to make a disposition of the case on the scheduled hearing date.

6. *Notice of Proceedings.*

Welfare & Institutions Code §726 provides that the citation which is issued in a Juvenile Court proceeding must be served on the person having custody of the juvenile, who normally will be the parent or guardian. In addition, notice of all proceedings in the Juvenile Court will be given to such parent or guardian. There is nothing in the Juvenile Court law which requires that either notice of the initial hearing or that notices of subsequent proceedings be given to counsel.

However, whenever it is possible to do so, the Deputy Probation Officer to whom a Juvenile Court case has been assigned will, if he knows that an attorney is involved, assume the responsibility of notifying the attorney of all hearings.

7. Opportunity to Consult with the Minor.

The Juvenile Court recognizes that an attorney has the right to consult in private with the child whom he represents. Accordingly, it is the policy of all Juvenile Detention facilities to afford a reasonable opportunity for such consultation at all reasonable times. The only restrictions on the exercise of this right are as follows:

(a) The attorney must sign an affidavit that he is the attorney for the minor and that he does not represent the defendant in a criminal case in which the minor was the victim;

(b) Some detention facilities (for example, Biscailuz Center) require that, before a request for consultation will be approved, the attorney must obtain and submit written authorization from the parent or guardian of the child to see the child.

The Juvenile Court recognizes that in unusual cases, the attorney will not have had the opportunity to consult with the minor in advance of the hearing. Where this is true, the Judge or hearing officer, upon being so informed, and upon the request of counsel, will afford a reasonable opportunity for such consultation.

Frequently Recurring Title Problems

By James F. Healey, Jr.*

EDITOR'S NOTE: *This completes the series of tips by James F. Healey, Jr. on ways of avoiding common title problems. Others have appeared in the January and February issues of the Bar Bulletin.*

OIL

(a) *Nature of a royalty interest in a community lease:* When the various owners in a certain area enter into a community oil and gas lease, they thereby "pool" their interests. It has been held that by executing such a lease, each owner thereby assigns to his co-lessors a percentage interest in all oil produced on his land under that lease. The royalty interest thus transferred by each landowner to his co-lessors is an incorporeal hereditament in gross and such hereditament, existing in gross, does not follow the conveyance of a lessor's land, but must be conveyed by a specific transfer of that interest. (*Tanner v. T. I. & T. Co.*, 20 Cal. (2) 814.) Therefore, if A, as owner of Blackacre, joins in the execution of a community oil and gas lease, a later conveyance of Blackacre from A to B passes fee title to B, but B does not receive the right to participate in royalties accruing from the lease. A separate assignment of the royalty interest is required. (See also *Howard v. General Petroleum Corp.*, 108 C.A. (2) 25.)

(b) *Successive reservations in deeds:* Frequently, in connection with conveyancing, the legal description employed in the deed is copied verbatim from the deed by which the grantor acquired title. Unfortunately, such copying is often done indiscriminately and no thought is given to the advisability of "editing" the material. This is generally true in oil transactions, but is not limited to that field. Suppose that A, owner of Blackacre, conveys same to B, reserving one-half of all oil, gas, minerals and hydrocarbon substances lying in, upon or under said land; B later conveys to C (copying the

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description in the deed to him); C conveys to D (following the same pattern) and so on. It is not uncommon to encounter six or more such conveyances in a chain of title.

In the event of an "oil play" in the area, who shall sign the lease? Who owns what? There is no problem as to A—it is certain that he owns one-half of the oil, etc. As to the remaining one-half, there are several possibilities, depending upon the construction which the court might place upon the deeds:

> *Construction 1:* That B conveyed what he owned, which was the land plus one-half of the oil, and that the reservation operated against the one-half conveyed and therefore B retained one-half of one-half (or one-fourth) of the oil and C received one-fourth of the oil. Under this theory each successive deed would grant and reserve a fractional interest and the end result of multiple deeds would be infinitesmal interests.
>
> *Construction 2:* That B reserved that which he did not own (the one-half reserved by A) and hence C acquired one-half of the oil.
>
> *Construction 3:* That B reserved the entire one-half which he acquired from A and hence A and B each own one-half and C acquired no interest in the oil, etc.

PARTITION

There are several peculiarities with regard to partition suits which give rise to title difficulties:

(a) *Unknown persons:* C.C.P. 753 provides a method whereby the interests of unknown persons (under contingent interests, executory devises, etc.) may be determined. The method of pleading and placing these interests at issue is provided for in this section and it can be most helpful.

(b) *Lis Pendens:* C.C.P. 755 provides that a *lis pendens must* be recorded *immediately* after filing the complaint (emphasis added) and there can be no doubt from the language of the section that this requirement is mandatory. It has been held that a failure to comply with this section will not vitiate a decree, "in the absence of a showing of prejudice." (*Rutledge v. Rutledge*, 119 C. A. (2) 114), but the cases cited in support of said ruling do not seem to be in point. It is suggested that it is safer to comply.

(c) *Contents of summons:* The peculiar requirements of C.C.P. 756 (particularly that which requires that the description of the property be set forth in the summons) were referred to in

the *Rutledge* case (*supra*) and received the same treatment as the requirements of C.C.P. 755 (*i. e.*, that a failure to comply is not fatal "in the absence of a showing of prejudice"). It is suggested that it is safer to comply with the requirements of C.C.P. 756, rather than leave the question for future determination in another law suit, as to whether or not the defendants were prejudiced by failure of the plaintiff to comply with the provisions of the code.

QUIET TITLE

In addition to the "garden variety" type of quiet title action which is provided for in C.C.P. 738, there are two other and very useful types of quiet title actions which are often referred to as "all unknown persons actions," by means of which it is possible to obtain a judgment which is binding upon unknown defendants:

(a) *Twenty-year action:* C.C.P. 749 provides for such a type of judgment, when the plaintiff has had adverse possession for twenty years and has paid the taxes for five years continuously next preceding the filing of the complaint. The exact method of naming unknown parties is set forth in this code section. The same requirements as in partition (discussed heretofore) are imposed, regarding filing a *Lis Pendens*. The special requirements as to summons, posting and service are set forth in C.C.P. 750 *et seq.* and should be scrupulously followed. It would appear that the section does not contemplate that one may dispense with probate proceedings on a *known* decedent (arrived at by strong inference, from reading Revenue & Taxation Code Section 3952, which specifically provides for "by-passing" probate proceedings on a known decedent).

(b) *Ten-year action:* C.C.P. 749.1 provides for such a type of judgment, when the plaintiff has had adverse possession for ten years and has paid the taxes for ten years continuously next preceding the filing of the complaint. The remarks made in (a) above, relative to *Lis Pendens*, Summons, etc. apply equally to this type of action.

RECORDING

In order that a muniment of title may impart constructive notice of its contents and become binding upon parties dealing with the real property affected thereby, it is necessary that such a muniment be recorded. C.C. 1213 *et seq.* govern the rules relating to recordation and failure to record.

It is important, therefore, that certified copies of all judgments affecting title (*e. g.*, Divorce, Quiet Title, Partition, Decree of Distribution, etc.) be placed of record promptly.

Federal Courts Criminal Indigent Defense Committee

PANEL FOR AUGUST

August 1, 1955

ROBERT MASLOW	6331 Hollywood Boulevard	HO 4-9163
ERWIN MORSE	9123 Sunset Boulevard	BR 2-1326
MCGREW WILLIS	215 South LaCienega Blvd.	OL 2-1196

August 8, 1955

JACK TENNER	6327 Wilshire Boulevard	WE 8-5228
JOHN R. CROWE	250 North Hope Street	MA 9-1137
PAUL SWEENEY	552 East Jefferson Blvd.	AD 4-9146
ROBERT MASLOW	6331 Hollywood Boulevard	HO 4-9163
F. RODMAN WOELFLE	221 North Robertson Blvd.	BR 2-5963

August 15, 1955

ARTHUR BAKER	139 North Broadway	MA 5-1471
JOHN R. HINCHEY	4688 Eagle Rock Boulevard	CL 5-2001
RICHARD A. STONE	5525 Wilshire Boulevard	WE 3-7128
ROBERT MASLOW	6331 Hollywood Boulevard	HO 4-9163
F. RODMAN WOELFLE	221 North Robertson Blvd.	BR 2-5963

August 22, 1955

ROBERT J. MCCLEAN	650 South Grand Avenue	MI 6003
PAUL CARUSO	220 North Canon Drive	BR 2-5631
EMMANUEL SAVITCH	9441 Wilshire Boulevard	BR 2-3205
ROBERT MASLOW	6331 Hollywood Boulevard	HO 4-9163
F. RODMAN WOELFLE	221 North Robertson Blvd.	BR 2-5963

August 29, 1955

I. FREDERICK FIORI	226 South Beverly Drive	CR 1-2645
JAMES L. LUND	226 South Beverly Drive	CR 1-2645
	c/o I. Frederick Fiori	CR 1-2645
PAULINE EPSTEIN	3028 Wabash Avenue	AN 3-7596
E. STUART MEYERS	5525 Wilshire Boulevard	WE 3-7128
ROBERT MASLOW	6331 Hollywood Boulevard	HO 4-9163
F. RODMAN WOELFLE	221 North Robertson Blvd.	BR 2-5963

Brothers-In-Law

By George Harnagel, Jr.

George Harnagel, Jr.

The **English** Bar Lawn Tennis Society (Patron: Her Majesty the Queen) has challenged The Association of the Bar of the City of New York to a match. Allen T. Klots, president of the Association, reports he has had a most cordial correspondence with Lord Dunboyne, the Honorable Secretary of the Society, on the subject.

* * *

THE COURT OF CHIVALRY

"I was up to the law courts today to see a Court which has not sat for 223 years. The Court of Chivalry, consisting of The Earl Marshall sitting as High Constable of England (The Duke Norfolk), with the Lord Chief Justice, the Two Kings of Arms and the Four Heralds of England, all in scarlet and gold with decorations and insignias. They sat to determine whether The Manchester Variety Theatre could use The Arms of The Manchester Corporation without permission. . . . The only statute dealing with the jurisdiction of the Court was one of 8 Richard II (1385 I believe), but it had been repealed a hundred years ago or so when the Court was thought to be obsolete. So counsel had to interpret the 8 Richard II (it was written in Norman French) and then find out what the jurisdiction and procedure was before that date. One nice point arose when the Lord Chief Justice asked counsel how the Court would enforce its judgments and was told that The Earl Marshall had power to commit persons to his prison. At this point, His Grace looked startled—I don't believe he knew he had a prison of his own. . . . Then, as only gentlemen could bear arms, the question arose could The Manchester Hall of Variety be called a gentlemen?"—From a letter from London appearing in *The Advocate* of the **Vancouver** Bar Association.

William Hawley Atwell recently retired, at the age of 85, after serving for 32 years as United States District Judge for the **Northern District of Texas.** *Texas Bar Journal* writes of him:

> "He heard 8,000 cases and he was in full charge of his court in every one of them. . . . He demanded the dignity and discipline he applied to himself from all attorneys in his courtroom. . . .
>
> "The slender, aristocratic jurist, clothed in a black tailor-made suit and white shirt adorned with black silk bow tie, was an awe-inspiring figure, even to the most eminent of the lawyers who practiced before him."

* * *

"Frank Smith was in Washington last week and got into one of the Senate subway cars . . . Recognizing his fellow passenger as the Junior Senator from Wisconsin, Frank decided to make some conversation . . . So he said, 'How do you do, Mr. McCarthy. My name is Frank Smith. I'm a Philadelphia lawyer' . . . This produced only a noncommittal grunt from Brother Joe . . . So Frank tried again . . . 'Senator,' he said. 'I have a law partner who is wild about you. He thinks you're the greatest thing in the Senate' . . . This had the desired effect . . . Senator McCarthy turned, beaming, and said, 'Is that so?' . . . 'Yeah,' said Frank. 'We get into the worst arguments about that.'" — From *Trivia,* a regular feature of *The Shingle* of the **Philadelphia** Bar Association.

* * *

In a hearing on a motion to punish a defendant husband for contempt for failing to make alimony payments as provided by a Court order in a separation action, the plaintiff wife was asked by the husband's attorney on cross examination:

> "Q. Isn't it a fact that your husband frequently asked you to get a divorce and that you refused? A. Sure I did. After living with that no-good bum for fifteen years, I should get a divorce and make him happy!"

* * *

The Brooklyn Barrister vouches for the authenticity of the following courtroom comedy:

> "Q. Take the next item. What is your complaint about the crummy pipe?
>
> Mr. A.: I object to that characterization, your Honor.
>
> The Court: Yes, reframe the question.
>
> Mr. B.: Why, judge, it's in the third item in the bill of particulars. There it is, c-h-r-o-m-e pipe, crummy pipe."

John W. Davis, one of the great lawyers of our time, died on March 24, at the age of 81. A few months before his death Mr. Davis was given a party by the Bar Association of the City of **New York.** He responded to the tributes paid him with his usual felicity as follows:

Mr. Chairman, Ladies and Gentlemen:

I am not sure what my own feelings are at this moment. I confess that I have greatly enjoyed this evening, but after all my inner soul tells me that I am more or less of a sacrificial lamb. It is not easy, I think, for any man to sit silently and hear his praises pronounced; still worse to sit silently and hear them sung. It's quite as embarrassing to find his whole life pictured on the screen—his most intimate experiences, and then to have one of his own cherished partners make a more or less apocryphal recital of certain events in his past career. . . .

I owe a great deal to the lawyers of the City of New York. . . . I came here, as you have been told, thirty-three years ago, a raw immigrant, about as raw as any that ever came through Ellis Island, I think. I was a stranger and you took me in. After ten years of government service I was certainly naked financially and you clothed me. I have not yet called on you for services in prison, but we never know what may happen. I have been sick and you have visited me, and if sooner or later my foot slips on the income tax road I shall rely on you to visit me there. For all that I am extremely grateful.

I am grateful for this occasion. I am grateful to those who have sung me, pictured me, entertained me and imagined a biography. Some reference has been made to the day of my birth, and about that there can be no secret. I now have four score years well behind me, and what you have done this evening and the good will that I feel flowing from you gives color to the sunset.